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Mailed: September 6, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Celebrity Signatures International, Inc.

Serial No. 78357961

Gerald M. Kraai of Lathrop & Gage for Celebrity Signatures International, Inc.

Marc Leipzig, Trademark Examining Attorney, Law Office 115
(Tomas V. Vlcek, Managing Attorney).

Before Walters, Holtzman and Rogers, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Celebrity Signatures International, Inc. has filed an application to register the standard character mark SHEER INDULGENCE on the Principal Register for "wigs, hairpieces, and add-in and add-on hair accessories constructed primarily of synthetic and/or human hair," in International Class 26.¹

The examining attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C.

¹ Serial No. 78357961, filed January 27, 2004, based on an allegation of a bona fide intention to use the mark in commerce.

1052(d), on the ground that applicant's mark so resembles the mark SHEER INDULGENCE, previously registered for ladies' pantyhose and hosiery,² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper*

² Registration No. 1103097 issued September 26, 1978, to Kayser-Roth Corporation, in International Class 25. [Renewed; Section 15 affidavit acknowledged.]

Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The examining attorney states that the marks are identical and contends that the goods are closely related and often supplied by the same businesses; and, thus, the goods travel in the same channels of trade to the same classes of purchasers. In support of his position, the examining attorney submitted copies of five third-party registrations that include wigs and hair accessories and hosiery among the identified goods, and copies of excerpts from various third-party websites marketing, in close proximity to one another, wigs and hair accessories and hosiery. In view of the website evidence, the examining attorney contends that "parties supplying wigs and hosiery are particular types of clothing and/or costume stores, not massive retailers supplying everything from dog food to motor oil to video games" (brief, unnumbered p. 5).

Applicant does not dispute that the marks are identical, but contends that the goods are not related, noting that the products are diverse and used for very different purposes. Applicant argues that the third-party registrations in the record are of little evidentiary value to show consumer perception; that the mere five registrations of record are not sufficient to establish that

consumers will assume the goods come from the same source; and that the mere fact that such goods may be sold in the same store does not mean that consumers will assume the goods come from the same manufacturer, noting that three of the registrants are retailers and two of the retailers are nationally recognized chains that bring together under a single roof the diverse goods of many manufacturers.

Applicant argues that the website evidence is inapposite for the same reason, stating that websites operate like department stores by bringing together a myriad of products for consumers' convenience. Applicant submitted copies of third-party registrations for the marks MCDONALDS and BUDWEISER for a wide variety of goods.

Applicant contends, further, that the trade channels differ because applicant sells its products through "beauty salons, wholesale beauty supply distributors, wig stores and websites that only offer wigs," whereas "registrant's goods may be found at grocery stores, drug stores, mass-market discount stores and websites offering a variety of goods." Finally, applicant contends that its wigs are bought mainly following medical treatment. The wigs are relatively expensive, costing around \$100, and the wigs are purchased with care after great consideration. Applicant states that, "in contrast, ladies' pantyhose are fungible goods, purchased on impulse, with little to no consideration

exercised in their purchase" (brief, p. 8), and that registrant's hosiery is relatively inexpensive. Applicant submitted evidence from two Internet websites, one providing information about the registrant, the other, showing an advertisement for registrant's hosiery on a Burlington website.³

There is no question that the marks involved in this case are identical. It is well established that "[i]f the marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion." *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983).

Thus, we turn to consider the goods involved in this case. We note first that, contrary to applicant's arguments about the trade channels, classes of purchasers and care consumers are likely to exercise in purchasing the respective products, the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1

³ Applicant also submitted an excerpt from www.jockey.com wherein hosiery, underwear and lingerie are advertised.

USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991). In this case, there are no restrictions in the identifications of goods and so we must assume that the identified wigs and hair accessories and hosiery travel through all the normal channels of trade for such products to the usual purchasers of such products. These are both largely general consumer items that will certainly travel through overlapping, if not the same, trade channels.

It is also a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each party's goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein. Thus, our inquiry does not end with the fact, noted by applicant, that these are different products used for different purposes.

It is true, as also noted by applicant, that the mere presence of items in a department store or on a department store-like retail website is insufficient, alone, to warrant a conclusion that goods are related. However, the five website excerpts submitted by the examining attorney show wigs and hosiery marketed closely together. Following are several examples:

www.daniellesboutique.com - The home page contains the following opening statement: "If you are a woman, or just play one as [on] TV, shop with us for quality wigs, lingerie, shoes and much more at affordable prices." The six product category links on the left-hand side of the page include "wigs," "hosiery" and "lingerie."

www.studiolites.com - the homepage has eight links centered on the page, the first two of which are, side-by-side, "wigs" and "hosiery."

www.carlas.com - A picture of the shop on the home page bears the caption "wigs, panties and hosiery" and shows these three items displayed together.

We find that this evidence, supported by the third-party registration evidence, shows a sufficient relationship between the respective goods that confusion as to source is likely if such goods are identified by identical marks.

Therefore, we conclude that in view of the identity of applicant's mark, SHEER INDULGENCE, and registrant's mark, SHEER INDULGENCE, their contemporaneous use on the goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

To the extent that any doubts might exist as to the correctness of this conclusion, we resolve such doubts against applicant. See *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992); *Ava Enterprises Inc. v. Audio Boss USA Inc.*, 77 USPQ2d 1783 (TTAB 2006); *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844 (TTAB 2004).

Decision: The refusal under Section 2(d) of the Act is affirmed.